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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,746

06/30/2004

Gottfried Lehmann

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EXAMINER

CURS, NATHAN M

ART UNIT

PAPER NUMBER

2613

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/500,746</p>	<p>Applicant(s) LEHMANN ET AL.</p>	
	<p>Examiner NATHAN M. CURS</p>	<p>Art Unit 2613</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 11-22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Jason Chan/
Supervisory Patent Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant's arguments are not persuasive. Regarding claims 17 and 18 rejected under 35 USC § 112-2nd paragraph, the Applicant argues that two fibers can each respectively have a length and launch power. However, if those two fibers are connected in series, as claimed, the power entering the second fiber in the series is not a launch power. Only the initial power entering the first fiber in the series is a launch power. Regarding the 35 USC § 103 rejections based on Essiambre, the Applicant first argues that the Examiner's reasoning is flawed because "when... two different data transmission rates are used... each WDM channel sent via an optical transmission system optimized for transmitting a first lower data transmission rate, the optical signals have a second higher data transmission rate become so distorted..." However, the modified system of Essiambre in the rejections is not "optimized for transmitting a first lower data transmission rate" to the detriment of the higher rate; it's unclear how the Applicant reached this conclusion from the rejections. The modified system of Essiambre supports both transmission rates, by using no pre-compensation for the lower rate and using pre-compensation for the higher rate, the two rates multiplexed together in the WDM system. The Applicant next argues that Essiambre doesn't disclose pre-compensation upstream of the first length of fiber, arguing that Essiambre discloses post-compensation instead. The Applicant seems to be confusing Essiambre's "post amplifier" which explicitly has pre-compensation fiber upstream from the first length of fiber (figs. 1 and 2 and col. 5 lines 22-33), with Essiambre's "post-compensation" which occurs at the end of transmission (see figs. 1 and 2, "POST-COMPENSATION"). Since Essiambre explicitly discloses pre-compensation upstream from the first length of fiber, the Applicant's arguments that such pre-compensation would not have been obvious without impermissible hindsight is not persuasive.